IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 27TH JULY 2007/5TH SRAVANA 1929

OP.No. 2182 of 2001(S)

OA.1340/1997 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. THE CHIEF GENERAL MANAGER,
TELECOM KERALA CIRCLE, THIRUVANANTHAPURAM.

2. THE DIRECTOR GENERAL,
TELECOMMUNCIATION DEPARTMENT, NEW DELHI.

3. UNION OF INDIA, REPRESENTED BY ITS SECRETARY
MINISTRY OF PERSONNEL PUBLIC GRIEVANCES
AND PENSION, NEW DELHI.

BY ADV. SRI.K.KESAVANKUTTY, SC, BSNL
SRI.P.S.SREEDHARAN PILLAI, SCGSC
SRI.K.RAMAKUMAR, SC, BSNL

RESPONDENTS:
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1. THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH REPRESENTED BY ITS REGISTRAR.

2. SRI.RAMAN NAIR.N.
JUNIOR TELECOM OFFICER, TELEX OUTDOOR,
MANJALIKULAM ROAD, OPPOSITE TO DESHABIMANI PRESS,
THIRUVANANTHAPURAM - 695 001.

BY ADV. SRI.K.HARILAL
SRI.J.HARIKUMAR FOR R2

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/07/2007, ALONG WITH OP NO. 2983 OF 2001, THE COURT ON 27/07/2007 DELIVERED THE FOLLOWING:

OP NO.2182/2001

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE ORIGINAL APPLICATION ALONGWITH ANNEXURES FILED BEFORE THE FIRST RESPONDENT BY THE 2ND RESPONDENT.

EXT.P2: TRUE COPY OF REPLY STATEMENT FILED BY RESPONDENTS 1 TO 3 IN THE OA BEFORE THE FIRST RESPONDENT HEREIN.

EXT.P3; TRUE COPY OF ORDER OF TRIBUNAL DT.30/6/2000.

//TRUE COPY//

K.S.RADHAKRISHNAN & ANTONY DOMINIC, JJ.

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O.P. NOs. 2182 & 2983 OF 2001

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Dated this the 27th day of July, 2007

J U D G M E N T

Antony Dominic, J.

The respondents in OA Nos. 1340/97 and 1423/97 are the petitioners in these writ petitions. The 2nd respondent in OP No.2182/2001 filed OA 1340/97 praying for quashing Annexure A12, to declare that he was entitled to have the period of preappointment training treated as duty for increment in the post of Junior Telecom Officer and to direct the first appellant to regulate his increment in the Junior Telecom Officer cadre and to step up his pay on par with the pay of Smt.S.Sobha. OA No.1423/97 was filed by the 2nd respondent in OP No.2983/2001 for identical reliefs.

2. In OA 1340/1997 only the 2nd relief was pressed by the applicant and the Tribunal, by its impugned order granted that and following the said order, relief was granted to the applicant in OA 1423/97 also. Aggrieved by these orders, writ petitions have been filed seeking to quash the same. Since the reliefs sought for

are identical in nature, we dispose of these writ petitions by this common judgment. For the purpose of disposal of these cases, we shall refer to the facts in OP 2182/2001.

3. The first respondent was a departmental candidate promoted against the 1989 departmental quota vacancies to the post of Junior Telecom Officer. Prior to his promotion, he had successfully completed eight months pre appointment training and was thereafter appointed on 8/10/91. His pay was fixed at Rs.1640/- in the scale of 1640-2900 with the date of increment on 1/10/92. The pre-appointment period of training was not taken into account while fixing his pay in the promoted post or fixing his next increment date. In the aforesaid circumstances, relying on the order of the Central Administrative Tribunal in OA 101/92, he filed the application before the Tribunal praying for the reliefs mentioned earlier.

4. The petitioners contended before the Tribunal that the pre-appointment training undergone by the first respondent was not counted, as that period was already treated as duty for the purpose of increment in respect of his lower post from which he was promoted. They also pleaded that the order in OA 101/92

was inapplicable to the first respondent. However, relying on the order in OA 101/92, relief No.2, which alone was pressed, was granted by the Tribunal. It is challenging that order of the Tribunal, the petitioners have filed this writ petition.

5. Coming to the facts of OP 2983/01 is concerned, following the order in OA 1340/97, relief was granted to the applicant therein as well. The counsel for the writ petitioner contended that in so far as second prayer sought by the first respondents in these two original petitions are concerned, the order in OA 101/92 was totally inapplicable and that their pay has been correctly fixed on their promotion. It was stated that this aspect has been highlighted in the reply statement filed by the petitioners in the proceedings before the Central Administrative Tribunal and that has not been adverted to while disposing of the original applications.

6. Having heard the submissions at the bar, we are inclined to agree with the counsel for the writ petitioners. It is seen that in the reply statement produced as Ext.P2, it has been stated that the first respondent in OP 2182/01 was a departmental candidate selected and appointed as Junior Telecom

Officer w.e.f. 8/10/91 on successful completion of eight months training and accordingly his pay was fixed at Rs.1640 with the next date of increment on 1/10/92. In so far as Smt.S.Sobha, whose case was pointed out by the first respondent is concerned, it was stated that she was a direct recruit and appointed as JTO w.e.f. 24/12/1990 after pre-appointment training and that her pay was fixed on Rs.1640 on 24/12/1990. According to the petitioners, she happened to draw her next increment on 1/5/91 due to the addition of period of pre-appointment training counted for the purpose of drawing increment in accordance with the Government of India Office Memorandum dated 22/10/90. It was stated that in so far as the first respondent is concerned, his period of training was treated as duty for the purpose of increment in respect of his lower post from which he was promoted and that the Government order itself provided for rectification of anomaly by stepping up of the pay, in case if the anomaly resulting in the departmental candidate drawing less pay scale due to the counting of the training period for direct recruits. According to the respondents, the anomaly was not as a result due to the counting of training period but due to the earlier

training and appointment of Smt.Sobha as direct recruit from outside.

7. On going through the order of the Tribunal, we notice that none of these aspects have been considered by the Tribunal. The respondents explained that the case of the first respondent is incomparable with that of Smt.Sobha and therefore had these aspects been taken into consideration by the Tribunal, the Tribunal could not have granted the second relief sought for by the applicants.

For these reasons, we are not in a position to sustain Ext.P3 order in OP 2182/2001 and hence we quash the same. For the same reasons, Ext.P3 order in OP 2983/2001 will also stand quashed. The original petitions will stand allowed.

K.S.RADHAKRISHNAN, JUDGE.

ANTONY DOMINIC, JUDGE.

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